

MJC:ljc 95448 \Pleadings\95448 49 Cell Phone 10-17-22

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CHARM HOWIE

VS.

CITY OF PROVIDENCE, by and through its
Treasurer, JAMES J. LOMBARDI III, ET AL

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C.A. NO. 1:17-cv-00604-JJM-LDA

DEFENDANTS' MOTION IN LIMINE RE: CELL PHONE CALLS

[In addition to the content of this motion, the defendants incorporate the factual background enunciated in their pre-trial memorandum of law.]

Now come the defendants and move, in limine, to preclude the plaintiff from introducing and/or referencing so-called cell phone calls made or received by defendants Place and/or Sheridan while on scene at 44 Adelaide.

At the District Court criminal trial, plaintiff's counsel made much to-do about cell phone calls that may have been made or received at such time. At his deposition in the case at bar, the plaintiff testified that while he was sitting in the back of the police car, he saw Officer Sheridan on his phone, laughing. He does not know whether Sheridan made a call or received a call.

The plaintiff has intimated that any such calls are suggestive of a malevolent intent on the part of the officers. Aside from that being purely speculative, the law is clear that under the objective reasonableness test, the subjective intent or motivation of the officer is irrelevant.

Moreover, there is no prohibition against police officers using their phones as a means of communication for police work. Under the Department's body-worn camera policy (which did not exist at the time of this incident), officers are prohibited from using personal audio or video recording devices.

According to cell phone records subpoenaed by the plaintiff, Officer Place made an outgoing call at 2:07 A.M. which lasted anywhere between one and two minutes. The incident in question was at 1:40 A.M. Said call was to another police officer. The only call for Sheridan at or around the incident in question was at 1:39 A.M. It was an outgoing call lasting anywhere from one to sixty seconds and was to another patrol officer. The next call was at 2:25 A.M. to the front desk at the police station.

It goes without saying that all evidence should be of some relevance or materiality to the cause of action in question. The said referenced cell phone usage, as limited as it was, is neither relevant nor material to any issue in the case. Absent pure speculation, there is simply no evidentiary value to this proposed evidence.

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By its Attorneys,

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PLACE, POTTER and SHERIDAN,
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CERTIFICATION

I hereby certify that I have filed the within with the United States District Court on this 24th day of October 2022, that a copy is available for viewing and downloading via the ECF system, and that I have caused a copy to be sent to:

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